

In his motion for reconsideration, Mr. Binkerd raises concerns about the location of the proposed project and the accuracy of information provided by the Applicants on the net metering application form. Mr. Binkerd contends that the planned project location is fourteen feet further

from the Applicants' home than the location described in the application. Mr Binkerd also argues that the Applicants failed to provide notice of the application to the adjoining landowners of a lot owned by the Applicants that is contiguous to the lot on which the project is to be located.

The Applicants argue that, while they have not conducted precise measurements of the distance of the project from their home themselves, they do not dispute Mr. Binkerd's measurements. However, the Applicants contend, that they "do not believe that this 14-foot difference would result in the Board's reaching a different conclusion" with regard to the aesthetic impacts of the project. The Applicants also acknowledge ownership of a contiguous lot located across the road from the property where the project is proposed to be located. The Applicants argue that they are unaware of any requirement to notice adjoining landowners of the separate parcel. The Applicants also state that they provided additional notice to adjoining owners of the contiguous parcel located directly across the road from their home because the project is potentially visible from that neighboring property.

Pursuant to the Board's net metering application form, applicants for this type of system are required to provide a copy of the application to all adjoining property owners. The first page of the application form includes a prominent "notice to those with concerns about the net metering proposal" providing that comments and requests for hearing regarding the net metering application must be filed with the Board within thirty days. This requirement allows the Board to determine the scope of any further investigation or hearings related to the application in a timely manner. This requirement also allows the applicant the opportunity to respond to any comments prior to further investigation. While Mr. Binkerd filed comments on the project within the required comment period, those comments dealt solely with the aesthetic impacts of the project. Mr. Binkerd did not raise questions regarding the proposed project location described in the application or the application notice until following the issuance of the CPG. It appears that Mr. Binkerd is seeking to use the motion for reconsideration as a means of filing additional comments on the project that should have been filed earlier. The purpose of a motion for reconsideration is for the Board to reconsider "issues previously before it," and to "examine the correctness of the judgment itself."¹ Reconsideration is not intended to allow a party to present

1. *In re Robinson/Keir Partnership*, 154 Vt. 50, 54 (1990); see also Docket No. 6651, *In re Verizon Wireless*, Order of 10/6/06 at 2.

evidence or issues that it failed to present earlier.² Mr. Binkerd also offers no explanation as to why these concerns were not raised within the initial comment period. Because Mr. Binkerd failed to raise these issues within the prescribed comment period, the motion for reconsideration is denied.

Even if Mr. Binkerd had raised these concerns in a timely manner, we find the arguments in the motion unpersuasive. The application includes a hand-drawn site plan which describes the proposed location of the project as approximately 75-feet northwest of the Applicants' residence. Mr. Binkerd attended a site visit to the proposed project location, conducted by the Hearing Officer in this case, where measurements of the proposed location to his property line were taken.³ Mr. Binkerd also attended a prehearing conference, where he estimated the distance of the proposed project from his home at approximately 300 feet.⁴ Mr. Binkerd now alleges that, based apparently upon subsequent measurements he has conducted without the Applicants' knowledge, the project will be located 89 feet from the Applicants' residence and 200 feet from his residence. Therefore, Mr. Binkerd argues, the Applicants should be required to amend the application or locate the project as described in the application.

It is difficult to assess the accuracy of Mr. Binkerd's subsequent measurements given that they were not witnessed by other parties. However, pursuant to condition No. 1 of the CPG, the Applicants are required to construct the project in accordance with the plans submitted as part of the application which describe the site as approximately 75 feet northwest of their residence. Any material or substantial change to the project requires Board approval. The 75-foot distance described in the Applicants' hand drawn site plan is clearly an approximation and never represented by the Applicants as a precise measurement. The proposed project location was viewed by all parties at the site visit conducted by the Hearing Officer. The Applicants have not proposed a change to the project location viewed at the site visit and represented in their application. Therefore, we conclude that an amendment to the application is not necessary.

With respect to adjoining landowners, applicants are required, pursuant to the Board's net metering application form instructions, to provide a copy of the application to all adjoining

2. *Rubin v. Sterling Enterprises*, 164 Vt. 582, 589 (1996); *Ray E. Friedman & Co. v. Jenkins*, 824 F.2d 657, 660 (8th Cir. 1987).

3. See tr. 8/4/09 at 5-6 (Binkerd).

4. See tr. 8/4/09 at 5-6 (Binkerd).

landowners of the property on which the project is located. The application form does not require notice to adjoining owners of all parcels contiguous to that parcel as Mr. Binkerd suggests. While notice to adjoining owners of contiguous parcels may be required pursuant to some zoning regulations, the relatively small size of net metering installations does not ordinarily warrant this type of extensive notice.⁵ The Applicants attest that they have provided notice to all adjoining landowners of the property on which the project is located, which Mr. Binkerd does not dispute. The Applicants have also provided additional notice to the only adjoining owner of the contiguous parcel likely to view the project. Therefore, we conclude that the Applicants have complied with the notice requirements.

SO ORDERED.

DATED at Montpelier, Vermont, this 2nd day of December, 2009.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: DECEMBER 2, 2009

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us).

5. We also note that, with the exception of Mr. Binkerd, no comments regarding this project from adjoining or non-adjoining landowners have been filed with the Board.